

# TERMS AND CONDITIONS (Purchase of Services)



Whilst we try not to take ourselves too seriously at FizzPopBANG, we take our business ethics very seriously. This legal document ensures that we remain open at all times, with the sole intent of protecting both our interests.

## 1. DEFINITIONS

**1.1** In this Agreement, the following words shall have the following meanings:

**“Agreement”** means together the Proposal and these Terms and Conditions.

**“Confidential Information”** means any information that  
**(a)** is marked confidential or is otherwise identified as confidential, or  
**(b)** even if it is not marked “confidential” a reasonable person would recognise as information that ought to be treated as confidential information including tools, know-how, formulae and processes, technical and non-technical data, patterns, compilations, programs, methods, techniques, databases, contractual information, Client information, and any other relevant information furnished by the recipient by and on behalf of the other party under the Agreement. For the avoidance of doubt FizzPopBANG Materials shall be considered Confidential Information.

**“FizzPopBANG”** means FizzPopBANG Limited a company incorporated in the England and Wales whose registered office is at 41 Auckland Road, Kingston Upon Thames, Surrey, KT1 3BQ.

**“Client”** means the entity identified in the Proposal.

**“Deliverables”** means the specific materials to be delivered to the Client as part of the Services as set out specifically in the Proposal.

**“FizzPopBANG Materials”** means

**(1)** Materials belonging to FizzPopBANG which exist at the date of execution of a Proposal, including but not limited to printed materials such as pre-work, participant journals and any additional course content, facilitator notes or frameworks, digital materials such as PowerPoint presentations or blended learning modules including digital snapshots, digital conversation guides or digital wildcards; and

**(2)** Materials developed during the term of a Proposal which are not Deliverables and have not been created solely for performance of the Services;

**“Fees”** means the total sum to be paid by the Client as stated on the Proposal, (including the costs of any Sub-Contractors), and any agreed expenses to FizzPopBANG.

**“Intellectual Property Rights”** means all patents, rights to inventions, copyright and related rights, moral rights, database rights, semiconductor topography rights, utility models, rights in designs, trade marks, service marks, trade names, domain names, rights in goodwill, rights in undisclosed or confidential information, methodologies, training modules and other similar or equivalent rights or forms of protection as may now or in the future exist anywhere in the world.

**“Personnel”** means all personnel required to perform the Services including Sub-Contractors.

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**“Proposal”** means the document setting out amongst other things the Client details, Deliverables Fees and invoice schedule.

**“Services”** means the services provided to the Client as specified in the Proposal.

**“Sub-Contractors”** means the third-party services or personnel engaged as part of the Services.

## 2. THE SERVICES

**2.1** This Agreement shall be deemed accepted upon signing the Proposal or upon commencement of the Services. FizzPopBANG shall provide the Services from the date specified in the Proposal. FizzPopBANG shall provide the Services to the Client in accordance with the Client’s reasonable requests from time to time, best industry practice and the terms of this Agreement.

**2.2** FizzPopBANG warrants that; (a) it will perform the Services in a professional manner; and (b) each of its Personnel are suitably qualified and trained in order to provide the Services;

**2.3** The Client shall: (a) fully brief FizzPopBANG and ensure the accuracy of any materials it provides to it in the performance of the Services; and (b) pay the Fees and agreed costs and expenses.

**2.4** Each party warrants, undertakes and represents on an on-going basis that: (a) it has full capacity and authority to enter into and perform its obligations under this Agreement;

(b) it is in compliance with all applicable laws, regulations and codes of practice;

(c) it will not do any act or make any omission in relation to the performance of its obligations under this Agreement which does or may adversely materially affect the reputation of the other party; and

(d) the Deliverables are complete, accurate, noninfringing and compliant in all respects with this Agreement.

**2.5** Any change to the scope of the Services shall be recorded in writing by the parties. FizzPopBANG shall inform the Client on any changes to the Fees or the timings of delivery of the Services as a result of such change.

**2.6** Any subsequent Proposal entered into between the Parties shall be subject to the terms of this Agreement unless stated otherwise.

## 3. FEES

**3.1** FizzPopBANG shall be entitled to invoice the Client for the Fees in accordance with the agreed invoicing schedule set out in the Proposal. The Client shall pay the Fees within 30 days of the date of invoice or as stated in the Proposal if different. Fees shall be paid in the currency shown in the Proposal. Payment of Fees shall be made as per the instructions set out in the Proposal.

**3.2** All sums payable by the Client to FizzPopBANG are

(a) exclusive of GST;

(b) shall be paid without deduction, withholding or set-off.

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**3.3** FizzPopBANG may charge interest on any undisputed overdue sum at the rate of 2% above the Bank of New Zealand base rate per annum.

## 4. TERMINATION

**4.1** Either party may terminate this Agreement, in whole or (with a proportionate reduction in the Fee) in part, at any time:

- (a)** immediately if the other party is in material breach of this Agreement which is not remedied within 14 days of that party being given notice to do so; or
- (b)** immediately if an order is made or a resolution is passed for the winding up of the party, or the party has a receiver or administrator appointed of any part of its assets, or circumstances arise which entitle the court or a creditor to appoint a receiver or manager or a court to make a winding up or administration order, or makes an arrangement with creditors or if the party is unable to pay its debts as and when they fall due.

**4.2** The Client shall pay all fees and committed or unavoidable costs payable to the date of termination.

**4.3** Upon expiry or termination of this Agreement or of any part of the Services, FizzPopBANG will deliver all Confidential Information to the Client and liaise with the Client and/or third party to ensure a satisfactory handover.

**4.4** Expiry or termination of this Agreement shall be without prejudice to any rights accrued up to the date of termination or any provisions which expressly or impliedly survive termination.

**4.5** If the Client decides to cancel the Services prior to their commencement they shall be liable to pay cancellation fees, (including any committed and unavoidable costs) as follows:

- (a)** Cancellation more than 14 business days before the date on which the Services were due to be delivered: all committed and unavoidable costs.
- (b)** Cancellation 14 business days or less (but more than 7 days) before the date on which the Services were due to be delivered: 50% of the Fees and all committed and unavoidable costs
- (c)** Cancellation 7 days or less before the date on which the Services were due to be delivered: 100% of the Fees and all committed and unavoidable costs.

## 5. LIMITATION OF LIABILITY

**5.1** Nothing in this Agreement shall exclude or limit either party's liability in respect of any claims:

- (a)** for death or personal injury caused by the negligence of such party; or
- (b)** resulting from any fraud including fraudulent misrepresentation made by such party; or
- (c)** for which liability may not otherwise lawfully be limited or excluded.

**5.2** Subject to Clause 5.1, neither party shall not be liable for any indirect, special or consequential losses or any loss of profits (whether direct or indirect), loss of goodwill, loss of business, loss of revenue or loss of anticipated savings.

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**5.3** Subject to Clauses 5.1 and 5.2, the parties total aggregate liability arising from or related to this Agreement (whether in contract, tort including negligence or otherwise) shall not exceed an amount equal to the Fees paid or payable to FizzPopBANG by the Client under this Agreement in the twelve (12) months preceding the event that triggered such liability.

## 6. INSURANCE

FizzPopBANG shall take out and maintain with a reputable third-party insurer an adequate level of insurance in respect of its professional indemnity liability.

## 7. INTELLECTUAL PROPERTY RIGHTS

**7.1** The Client acknowledges that ownership of all IPR in FizzPopBANG Materials shall remain vested in FizzPopBANG. To the extent that FizzPopBANG provides any FizzPopBANG Materials to the Client, FizzPopBANG hereby grants the Client a non-exclusive, nonsub-licensable, licence to use the relevant FizzPopBANG Materials solely for its internal purposes and not for publication or other distribution or communication to a third party (unless so authorised to the contrary in writing).

**7.2** Subject to Clause 7.3, the Client shall, on the payment of all Fees, own the Intellectual Property Rights in the Deliverables (which for the avoidance of doubt does not include any third party rights contained in the Deliverables) and FizzPopBANG irrevocably and unconditionally assigns with full title guarantee to the Client all and any Intellectual Property Rights, upon creation of the same, in the Deliverables. FizzPopBANG shall,

and shall procure that its Personnel waive in favour of the Client absolutely and irrevocably their moral rights (if any) in relation to such Deliverables.

**7.3** Nothing in this Agreement is intended to affect FizzPopBANG's ownership of materials used or developed by it independently of the Services or FizzPopBANG's generic and specific methodologies, tools, technology, training modules or processes which are used by it (but not developed by it) or any other Intellectual Property which is used in the performance of the Services (together the "Pre-Existing Materials"). If FizzPopBANG's Pre-Existing Materials (or part thereof) are incorporated in the Deliverables, or required to use or exploit the Services, FizzPopBANG hereby grants to the Client a perpetual, worldwide, irrevocable, nonexclusive, royalty-free licence to use the FizzPopBANG's Pre-Existing Materials to enable the Client to obtain the full benefit of the Services.

**7.4** FizzPopBANG warrants and represents that it has the right to assign or license all Intellectual Property Rights granted or assigned pursuant to this Agreement and that the grant and terms of its respective assignment or licence shall not infringe the Intellectual Property Rights of any third party.

**7.5** FizzPopBANG shall not acquire any right, title or interest in or to any Intellectual Property Rights owned by or licensed by any third party to the Client by reason of this Agreement and FizzPopBANG acknowledges that all such Intellectual Property Rights remain the property of the Client and/or its licensors.

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**7.6** Where software is to be provided by FizzPopBANG as part of the Services, the Client acknowledges that its use of such software may be subject to separate licence terms.

## 8. CLIENT MATERIALS

**8.1** Title to any property of the Client provided to FizzPopBANG for the performance of the Services shall remain with the Client.

**8.2** Subject to reasonable prior notice, the Client shall be entitled to retake possession of their property at any time from FizzPopBANG.

**8.3** The Client shall grant FizzPopBANG a non-exclusive, non-transferable, perpetual, worldwide licence to use such materials for the purposes of providing the Services in accordance with this Agreement.

**8.4** FizzPopBANG shall be entitled to produce a case study based on the provision of the Services subject to obtaining the Client's prior written permission (such permission not to be unreasonably withheld).

## 9. GENERAL

**9.1** Both parties shall during this Agreement and for a period of 2 years thereafter, keep confidential all Confidential Information and shall not use or disclose such Confidential Information to any third party except as may be strictly necessary in order to perform the Services or as required by law.

**9.2** FizzPopBANG is permitted to subcontract some or all of the Services, however, shall at all times remain liable for the acts and omissions of any Sub-Contractors.

**9.3** Subject to clause 9.2, neither party may assign, subcontract or in any way transfer any of their rights or obligations under this Agreement without the prior written consent of the other party.

**9.4** Each provision of this Agreement is severable and distinct from the others. Invalidity or unenforceability of a specific provision shall not affect the other provisions of this Agreement.

**9.5** Any failure to exercise or any delay in exercising a right or remedy provided this Agreement or at law or in equity shall not constitute a waiver of the rights or remedies or a waiver of any other rights or remedies.

**9.6** Nothing in this Agreement shall be construed as establishing or implying any partnership or agency relationship between the parties.

**9.7** This Agreement constitutes the entire agreement and understanding between the parties in respect of the matters dealt with within it and supersedes any previous agreement between the parties relating to such matters. This Agreement may only be amended in writing with the agreement of the Client and FizzPopBANG

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**9.8** No person who is not a party to this Agreement has any rights under the Contracts and Commercial Law Act 1997.

**9.9** Any notice required to be given under this Agreement shall be in writing and shall be validly served only if sent to the other at the address on the Proposal by hand, by registered first class post or special delivery.

**9.10** This Agreement and any noncontractual obligations shall be governed by New Zealand law and the parties agree to submit any dispute to the exclusive jurisdiction of the New Zealand Court.